



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2014-0210]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of modification of Airport Improvement Program (AIP) grant assurances.

SUMMARY: Changes have been made to the AIP grant assurances to conform the list of General Federal Requirements to the correct numbering of some of the documents that recently changed, to add recent legislation, to revise Assurance 10 to conform to current statute, to clarify that Assurance 25, Airport Revenues, applies when an airport sponsor takes a grant for airport planning, and to note that Assurance 37 applies to airport concession disadvantaged business enterprises. Assurance 20 of the Non-Airport Sponsor Assurances for Non-Airport Sponsors Undertaking Noise Compatibility Program Projects is also revised to delete paragraphs which discussed land purchased for airport development.

In addition, on April 24, 2013, the Secretary of Transportation signed the DOT Standard Title VI Assurances and Non-Discrimination Provisions, Order 1050.2A (Title VI

Assurances). The Title VI Assurances were incorporated into the FAA Office of Civil Rights Order 1400.11, the “Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration Order,” which was published on August 27, 2013. The changes to the AIP grant assurances in this Notice incorporate the Title VI Assurances.

DATES: The FAA is modifying several grant assurances in order to (1) conform the list of General Federal Requirements to the correct numbering of some of the documents that were recently changed by the Office of Management and Budget; (2) update and conform with statute; and (3) incorporate the DOT Title VI Assurances. The FAA will implement these modified grant assurances upon publication of this notice to expedite processing fiscal year 2014 grants under the Airport Improvement Program. The FAA will accept public comments concerning these modified grant assurances for 30 days.

Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If necessary, in response to comments received, the FAA would adopt any appropriate revisions to these grant assurance modifications through publication of a future notice in the Federal Register.

ADDRESSES: You may send comments [identified by Docket Number FAA-2014-XXXX] using any of the following methods:

- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Fax: 1-202-493-2251.
- Hand Delivery: To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank J. San Martin, Manager, Airports Financial Assistance Division, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-3831; facsimile: (202) 267-5302.

Authority for Grant Assurance Modifications

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Sections 47107 and 47122 of Title 49 United States Code.

SUPPLEMENTARY INFORMATION: A sponsor (applicant) seeking financial assistance in the form of an AIP grant for airport planning, airport development, noise compatibility planning or noise mitigation under 49 U.S.C., as amended, must agree to comply with certain assurances. These grant assurances are incorporated in, and become part of a sponsor's grant agreement for federal assistance. As need dictates, the FAA modifies these assurances to reflect new Federal requirements. Notice of such modifications is published in the Federal Register, and an opportunity for public comment is provided.

The assurances that apply to a sponsor depend on the type of sponsor. The three types of sponsor assurances are Airport Sponsor Assurances, Non-Airport Sponsors Undertaking Noise Compatibility Program Projects, and Planning Agency Sponsors.

The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; on August 18, 1999, at 64 FR 45008; on March 29, 2005 at 70 FR 15980; on March 18, 2011, at 76 FR 15028; and on April 13, 2012 at 77 FR 22376.

A complete list of the current grant assurances can be viewed at:

http://www.faa.gov/airports/aip/grant_assurances/

Discussion of AIP Grant Assurance Modifications

The FAA is making four changes to the AIP grant assurances. These changes will be in effect for grants issued in fiscal year 2014 and beyond.

The changes to the AIP grant assurances are as follows:

1. Technical non-substantive changes to correct some minor typographical errors.

Because these have no change on the substance of the assurances, these changes have not been specifically called out.

2. Addition of Assurance 25 to the list of assurances that apply to Airport Planning Undertaken by a Sponsor.

As stated in FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 FR 7696 (February 16, 1999), 49 U.S.C. 47133 applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" to include airport planning grants that relate to a specific airport. Many airport sponsors take grants for airport planning

projects. For a planning project, not all of the airport sponsor grant assurances apply, some project-specific assurances apply while the planning project is going on, and others continue to apply after the planning project is over. The previous version of the airport sponsor assurances did not list the revenue use provision (Assurance 25) as one of the assurances that apply for a planning project. Assurance 25 has been added to the list of assurances that continue past the completion of the planning projects. This change eliminates confusion by clarifying that if a sponsor is undertaking a planning project, it is subject to the published requirements for revenue use.

Section B Duration and Applicability, (3) Airport Planning Undertaken by a Sponsor, now reads,

“Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.”

3. Administrative Changes to Assurance No. 1, General Federal Requirements.

In 2008, the drug-free workplace requirements were included in 49 CFR part 32, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance). Also, in 2008, the Department of Transportation moved its nonprocurement suspension and debarment regulations from 49 CFR part 29 to a new 2 CFR part 1200, and adopted the government-wide guidance on nonprocurement suspension and debarment in 2 CFR part 180 (73 FR 24139, May 2, 2008).

In 2013, the Office of Management and Budget (OMB) compiled a number of Circulars in 2 CFR part 200, including Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” and Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

- a. In Assurance No. 1, General Federal Requirements, Federal Regulations section, make the following changes:
 1. Delete the entry for: 49 CFR part 29, Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants);
 2. Add a new entry for: 2 CFR part 1200 – Nonprocurement Suspension and Debarment
 3. Add a new entry for: 2 CFR part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement);
 4. Add a new entry for: 49 CFR part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance);
 5. Add a new entry for: 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- b. In Assurance No. 1, General Federal Requirements, delete the Office of Management and Budget Circulars and its two entries.
- c. In Assurance No. 1, General Federal Requirements – Federal Legislation, add the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

- d. Reorder the entries of Assurance 1 General Federal Requirements - Federal Regulations and Office of Management Budget Circulars into numerical order.

4. Revision of Assurance 10. Air and Water Quality Standards.

The 2003 FAA reauthorization bill, the Vision 100 – Century of Aviation Reauthorization Act, removed the specific statutory language requiring the chief executive officer of a state to certify that the airport development project will be designed, constructed, and operated in compliance with applicable air and water quality standards. The Act added in a requirement for a sponsor to provide a copy of a proposed amendment to the airport layout plan to a Metropolitan Planning Organization upon request. The Assurance has been revised to reflect these statutory changes.

5. Incorporation of DOT Standard Title VI Assurances and Non-Discrimination Provisions (Title VI Assurances).

The FAA modified the AIP grant assurances to incorporate the DOT Standard Title VI Assurances and Non-Discrimination Provisions, Order 1050.2A (Title VI Assurances) that were signed by the Secretary of Transportation on April 24, 2013. These Title VI Assurances, which have since been incorporated into FAA Order 1400.11, amend and augment FAA's AIP grant assurances related to Title VI of the Civil Rights Act of 1964. To incorporate the Title VI Assurances, changes were made in the AIP Grant Assurances to Assurance 1 and the Assurance 30, the Civil Rights Assurance.

- a. In Assurance No. 1, General Federal Requirements, Federal Legislation, the following changes are made to incorporate the Title VI Assurances:

1. Add a new entry for: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and
 2. Add a new entry for: Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12101 et seq.), prohibits discrimination on the basis of disability).
- b. In Assurance No. 1, General Federal Requirements, Federal Regulations, the following changes are made to incorporate the Title VI Assurances:
1. Add a new entry for: 28 CFR 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
 2. Add a new entry for: 28 CFR part 35 – Discrimination on the Basis of disability in State and Local Government Services.
 3. Add a new entry for: 49 CFR part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
 4. Add a new entry for: 49 CFR part 37 – Transportation Services for Individuals with Disabilities (ADA).

The AIP Grant Assurances previously required a sponsor to comply with rules preventing persons from being excluded on the grounds of race, creed, color, national origin, sex, age, or disability from participating in any activity conducted with or benefitting from the funds received from AIP grants. This requirement continues unchanged, but the protections are being extended to the programs, facilities and activities of the sponsor, so long as any portion of the program is grant funded or otherwise is federally-assisted. The Title VI Assurances require that sponsors insert specific civil rights language into all

contracting documents including bids, Requests for Proposals, and proposals. Specific contract provisions are also required for the acquisition or transfer of real property, whether or not these projects include federal assistance. The revised Civil Rights Assurance specifies when specific contract clauses are required.

Identical changes are made to Assurance 17, Civil Rights, in the Non-Airport Sponsors Undertaking Noise Compatibility Program Projects Assurances and Assurance 9, Civil Rights, in the Planning Agency Sponsor Assurances. The Civil Rights Assurance language is replaced with the following:

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found in as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR 21, it will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability

- (1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- (2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- (3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- (1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- (2) So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements including airport concessions, regardless of funding source:

“The (Name of Sponsor), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.
- (1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporate the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
 - (2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts, statutes, and regulations.

- (3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- (4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, creed, sex, age, disability, color, or national origin as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - (a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - (b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program, will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

6. Modification of Assurance 37

Assurance 37, the Disadvantaged Business Enterprises assurance has been modified to specifically note that the assurance applies to airport concession disadvantaged business enterprises.

7. Modification of Assurance 20 for Non-Airport Sponsors Undertaking

Noise Compatibility Program Projects

Paragraphs b and c of Assurance 20, Disposal of Land, have been deleted because these two paragraphs deal expressly about land that is acquired for airport development. Non-Airport Sponsors undertaking noise compatibility projects cannot undertake airport development projects and these two paragraphs were deleted. Paragraph d has been renumbered paragraph b.

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Issued in Washington, DC on March 28, 2014.

Elliott Black, Acting Director,
Office of Airport Planning
and Programming.